

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205279

DATE: July 19, 1982

MATTER OF: System Sciences Incorporated

DIGEST:

1. When requirement which has been omitted from a solicitation is made known to offerors during negotiations, proposal which fails to comply with it properly may be rejected.
2. Contracting agency has no legal obligation to reopen negotiations to remedy defects introduced into a previously acceptable technical proposal by a best and final offer or to read and evaluate proposals submitted before closing date.
3. When offeror has not been prejudiced by agency's failure to specify performance characteristics or to list salient characteristics for brand name or equal equipment, protest on the basis of undisclosed requirements will be denied.
4. Requests for clarification or amplification which lead offerors to areas of their proposals that are unclear are sufficient to alert them to deficiencies. When record shows that agency presented offeror with written requests for clarification on 11 different points, held at least two meetings with it, and allowed offeror to revise proposal, meaningful discussions have been held.
5. When proposal properly has been found technically unacceptable, offeror is not entitled to bid preparation costs.

System Sciences Incorporated protests award of a contract for a computerized information system that will be used to support the Airborne Warning and Control Systems (AWACS) Program Office. The Electronic Systems

Division, Air Force Systems Command, Hanscom Air Force Base, Massachusetts, awarded the contract to Program Control Corporation, the incumbent and only other offeror under solicitation No. F19628-81-R-0072. We deny the protest.

The primary basis of System Sciences' protest is that the Air Force improperly declared its technical proposal unacceptable because--in its best and final offer-- the firm changed brands of a printer/plotter that it proposed to use to produce various graphic displays, or "plots," of computer-generated data.

System Sciences also alleges that the Air Force failed to conduct meaningful discussions. The firm concludes that it should have received the award because it met the Government's minimum needs at a lower fixed price, \$1,090,041, than Program Control, whose price was \$1,348,717; it seeks award of the contract or bid preparation costs of \$70,560.

A. Printer/Plotter Requirements:

In the solicitation, the Air Force identified requirements for the printer/plotter in its instructions for preparation of cost proposals, where section L-3 stated that the successful contractor would be reimbursed for direct costs of travel and certain ancillary support equipment. Included in a list of four reimbursable items was a "plotter and maintenance (Versatec or equal)."

This was the only place in the solicitation that the brand name Versatec appeared. The statement of work indicated that contract deliverables would include a variety of plans, reports, viewgraphs, and "plotted outputs" to be used by the AWACS Program Office. The specifications--generally performance-type--required that the information systems have the capability to "output charts, graphs, or tabulations via a printer/plotter" and stated that reports to be displayed would range in size from 7-1/2-by-10 inches to 24-by-36 inches.

The record indicates that during July and August 1981, the Air Force and System Sciences discussed how costs for the printer plotter would be allocated. In addition, the Air Force questioned System Sciences' ability to deliver the equipment 60 days after award. System Sciences, by letter dated July 2, advised the Air Force that it had issued a purchase order to Versatec, thereby insuring availability of the printer/plotter.

The contracting officer states that upon assuming the job in mid-August he determined that Versatec equipment was not actually required and that an electrostatic plotter similar to Versatec's would be acceptable. In an August 31 letter to System Sciences, the Air Force summarized discussions, stating that the successful contractor was to furnish:

- (1) an "electrostatic printer/plotter," support items such as printer fluid, and any necessary maintenance agreements, and
- (2) printer/plotter paper for an average expected usage of 750 plots a month, "not to exceed" 36 inches a plot.

The Air Force argues that this letter made it clear what type of equipment the contractor had to furnish. Its report also indicates that telephone discussions with System Sciences confirmed the fact that although the solicitation asked for an electrostatic printer/plotter such as a Versatec or equivalent, the mention of Versatec was not meant to limit a contractor to that line of products.

The "not to exceed" language, the parties agree, was meant to indicate that 36 inches was an upper size limit, and that a machine which produced graphics as large as 36 inches was not actually required. In view of this, System Sciences apparently decided to consider alternate printer/plotters, including Hewlett-Packard's, and argues that it alerted the Air Force to this fact. The contracting officer, however, states that he does not recall discussing the Hewlett-Packard plotter with System Sciences and adds that if he did so, it was without any knowledge of the equipment, its characteristics or capabilities.

In its best and final offer, submitted a day before the September 29 deadline, System Sciences proposed a Hewlett-Packard plotter with an 11-by-17 inch plot capability, stating that it believed this equipment met all other specifications and was more cost effective than that manufactured by Versatec. The firm requested the contracting officer to use the more than 24 hours before best and finals were due to examine the substitute equipment.

The Air Force argues that System Sciences' initial technical proposal was acceptable and that it conducted discussions assuming that the firm would continue to offer a Versatec printer/plotter. The reason it downgraded System Sciences' final technical proposal, the Air Force states, is that the Hewlett-Packard model proposed is a pen plotter with an electrostatic hold-down feature, rather than an electrostatic plotter.

In its evaluation report, the Air Force states that on Versatec equipment, a plot can be run in 30 seconds, while a pen plotter typically takes from 15 to 30 minutes. In addition, the Air Force states, the color graphics capability of the Hewlett-Packard plotter is unnecessary. The Air Force indicates that the expected detail of the plots to be produced and the expected demand for 750 a month caused it to be seriously concerned as to the ability of the Hewlett-Packard equipment to meet its needs. System Sciences, in rebuttal, contends that plotter speed is a new and undisclosed requirement, introduced for the first time in the context of this protest.

In our opinion, the Air Force should have described its requirements for the printer/plotter by using performance specifications or, if a Versatec or equal was actually needed, should have identified salient characteristics in its request for proposals. Offerors then would not have had to guess that speed was important but color graphics capability was not. However, we believe offerors could have inferred a certain minimum speed requirement from the estimated 750 plots a month. For example, if the AWACS Program Office expects to use the system eight hours a day, five days a week, and we assume a month of 22 working days, approximately 34 plots a day or 4.25 plots an hour will be required. Thus, we believe the Air Force was legitimately concerned with plotter speed.

More importantly, the Air Force letter of August 31 specified an "electrostatic printer/plotter." We do not believe this term is ambiguous, i.e., has more than one reasonable meaning. The Air Force was using it precisely, to describe a printer/plotter that produced graphics by means of light acting on an electrically charged surface, as in xerography. Even when a requirement has been omitted from a solicitation, we have upheld rejection of proposals for failure to comply if the requirement has been made known to offerors during negotiations.

ADP Network Services, Inc., B-193817, March 7, 1979, 79-1 CPD 163. We believe the letter of August 31 served as notice to System Sciences that an electrostatic plotter was required.

System Sciences has provided us with Hewlett-Packard literature which describes the model proposed; it uses eight microprocessor-controlled pens and has an electrostatic hold-down for securing paper. It may be, as System Sciences has argued in lengthy submissions to our Office, that this plotter will meet the Air Force's needs equally as well as an electrostatic plotter. But it clearly does not prepare graphics by electrostatic means. Since the Air Force specified an electrostatic plotter, we believe it properly found System Sciences' best and final offer unacceptable. See Bell & Howell Company, B-203235.5, April 26, 1982, 82-1 CPD 378.

Moreover, from the record we cannot conclude that the Air Force either knew or should have known, prior to submission of best and finals, that System Sciences had misunderstood its requirements for an electrostatic printer/plotter. In any event, after best and finals had been requested, the Air Force had no legal obligation to advise System Sciences of its error or to allow it to revise its proposal. See TRW Inc., B-200142, April 16, 1981, 81-1 CPD 294. An agency is not required to reopen negotiations to remedy defects introduced into a previously acceptable technical proposal by a best and final offer. Centennial Systems, Inc., B-201853.2, April 16, 1982, 82-1 CPD 350, and cases cited therein. Nor did the Air Force have a legal obligation to read or evaluate a proposal submitted before the closing date. Colorado Research and Prediction Laboratory, Inc.--Reconsideration, B-199755.2, May 11, 1981, 81-1 CPD 369.

B. Other Evaluation Factors

Even if System Sciences' substitution had been acceptable to the Air Force, it does not appear that the firm would have been selected for award under evaluation criteria in which technical and managerial skills were rated equally, but were significantly more important than cost. In several other areas, the Air Force regarded System Sciences' proposal as presenting significantly higher risks than Program Control's.

For example, the Air Force questioned both the cost and feasibility of transferring the modular

International Business Machine Corporation (IBM) software offered by System Sciences to a new and possibly different host computer during a planned move of the AWACS Program Office to Hanscom Air Force Base. System Sciences did not indicate whether its proposed information management system would be compatible with equipment of vendors other than IBM, and could not estimate the extent of adaptation which might be required.

With regard to training, System Sciences planned to reserve places for 20 representatives of the AWACS program Office in an IBM training course in Los Angeles. The Air Force stated that ongoing training of Program Office personnel would be preferable, and that the training proposed by System Sciences would not accommodate new personnel or provide for changed requirements.

In addition, the Air Force rated System Sciences' corporate experience and the familiarity of its personnel with the proposed information management system as only fair. The firm stated that it had not had a Department of Defense prime contract and that its personnel had not applied the proposed system to any contract, although other Department of Defense contractors had done so successfully. In its best and final offer, System Sciences proposed to remedy its lack of experience by using subcontractors or consultants for such tasks as training and backup graphics production. The Air Force, however, noted that the Government should not be relying on third parties to resolve problems that normally would be within the purview of the contractor.

In view of this evaluation, we believe it is unlikely that System Sciences would have been selected for award, and thus even if, contrary to our conclusion above, the company was misled with respect to the printer/plotter, we would not view the Air Force's failure to state its requirements for a printer/plotter in more specific terms as materially prejudicial to the protester.

C. Discussions

Further, we find no factual basis for the allegation that the Air Force failed to conduct meaningful discussions regarding System Sciences' proposal. We have held that requests for clarification or amplification which lead offerors to areas of their proposals

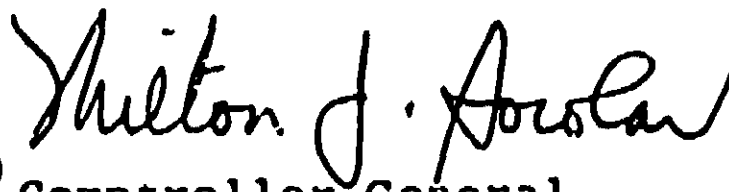
that are unclear are sufficient to alert them to deficiencies. Health Management Systems, B-200775, April 3, 1981, 81-1 CPD 255.

In this case, the record shows that the Air Force presented System Sciences with written requests for clarification on 11 different points (including its ability to deliver the printer/plotter within 60 days of award). Although the contracting officer states that there were no deficiencies in the firm's initial proposal, System Sciences' responses to the requests for clarification caused the Air Force to continue to rate it lower than Program Control in all areas other than the printer/plotter. In our opinion, further discussions would not have corrected problems inherent in System Sciences' use of software compatible only with IBM computers or its lack of experience, since a completely revised proposal would have been required.

D. Proposal Preparation Costs

Finally, since System Sciences' technical proposal properly was found to be unacceptable, it is not entitled to proposal preparation costs. Security Assistance Forces and Equipment International, Inc., B-195196, 195196.2, July 10, 1980, CPD 24.

The protest is denied.

for 
Comptroller General
of the United States